

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **SHAPUR SAHBA**

Serial No.:

Title: **MULLTI-RESONANT DOUBLE-SIDED HIGH-TEMPERATURE
SUPERCONDUCTIVE MAGNETIC DIPOLE ANTENNA**

Docket No.: **CECOM 5458**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR § 1.47(b)

Sir:

This is a Petition under the authority of 35 U.S.C. § 118 and 37 CFR § 1.47(b) to file a patent application designated as CECOM Docket No. 5458 on behalf of Dr. Shapur Sahba, an inventor who cannot be found or reached after diligent effort, who was formerly employed by the U.S. Army Communications-Electronics Command, Fort Monmouth, New Jersey.

1. The undersigned Petitioner is a Patent Attorney for the U.S. Army Communications-Electronics Command (hereinafter "CECOM"), Fort Monmouth, New Jersey, registered to practice before the U.S. Patent And Trademark Office under Registration No. 37,558. In that capacity, the undersigned Petitioner is authorized to write and prosecute patent applications before U.S. Patent And Trademark Office. The undersigned Petitioner is filing a patent application designated as CECOM Docket No. 5458 for Dr. Shapur Sahba, the sole inventor, and a former Government employee, who cannot be reached after diligent effort in order to protect the Army's proprietary interests in that patent application.

2. Dr. Shapur Sahba (hereinafter the "Inventor") was employed as a GS-12 Electronics Engineer by the Intelligence & Information Directorate of the Research, Development & Engineering Center of CECOM, Fort Monmouth, New Jersey from

August 21, 1995 to January 4, 2002 (Exhibit 1), according to his Standard Form 50 official Personnel Action showing his dates of his Government employment.

3. On May 3, 2000, during his Government employment as a GS-12 Electronics Engineer, the Inventor submitted a patent disclosure entitled "Double-Sided HTS Micro-Antennae Configurations.(Three Structures)," (Ex. 2) to the Intellectual Property Law Division of the CECOM Legal Office. This patent disclosure was designated as CECOM Docket No. 5458 and assigned to the undersigned Petitioner for patent prosecution. The Inventor is the sole inventor of the CECOM Docket No. 5458 patent disclosure.

4. On January 4, 2002, the Inventor resigned from his engineering position with the Government (Ex. 1). In an e-mail message dated August 19, 2002 (Ex. 4), the Inventor notified the Petitioner that he had resigned from Government service to establish "... a very small R&D corporation in New Jersey..." named the Sonoro R& D Corporation and inquired about the status of the CECOM Docket No. 5458 patent prosecution.

5. By letter dated June 27, 2002 (Ex. 3) the U.S. Patent And Trademark Office notified the Intellectual Property Law Division of the CECOM Legal Office that it recorded the assignment of U.S. Patent No. 6,403,977, entitled "Double-Sided High-Temperature Superconducting Flux-Flow Transistor," which was issued to the Inventor on June 11, 2002, to the Government, as represented by Secretary of the Army, and recorded by the U.S. Patent And Trademark Office at Reel and Frame Number 012833/0866 on April 16, 2002.

6. During November and December 2002, the Inventor provided additional details and graphs to Petitioner to assist him in preparing the CECOM Docket No. 5458 patent application (Ex. 5A-5C). In the Inventor's November 25, 2002 e-mail message to the Petitioner (Ex. 5A), the Inventor states "... I am requesting your assistance in filing the patent application on behalf of CECOM-RDEC..." The term "RDEC" is an acronym for CECOM'S Research, Development & Engineering Center.

7. On May 20-21, 2003, the Petitioner unsuccessfully tried to fax draft CECOM Docket No. 5458 drawings to the Inventor several times (Ex. 6). The May 21, 2003 Fax Log Report (unnumbered ninth page of Ex. 6) states "No answer" for 1-732-897-0774,

which is identified as the Inventor's fax number in his prior e-mail messages (Ex. 4 and 5A-5C).

8. By e-mail message dated May 20, 2003, (Ex. 7) the Petitioner advised the Inventor of difficulties in faxing the draft drawings to Inventor and sent the Inventor an electronic copy of the draft CECOM Docket No. 5458 patent application. The Petitioner also asked the Inventor if 1-732-897-0774 was still a valid fax number.

9. By e-mail message dated June 11, 2003, (Ex. 8) the Petitioner forwarded the May 20, 2003, (Ex. 7) e-mail message to the Inventor and asked him to reply to the earlier e-mail message. Inventor's e-mail provider stated that the Exhibit 8 message was successfully delivered. To date, the Inventor has not answered that message or any other inquiry.

10. It is respectfully submitted that the Inventor cannot be found or reached.

11. In addition to the May 20, 2003 (Ex. 7) and June 11, 2003 (Ex. 8) e-mail messages to the Inventor, the Petitioner's diligent efforts to find or reach the Inventor include calling the work phone number listed on the address file card (Ex. 9) kept by the Intellectual Property Law Division of CECOM Legal Office. The Inventor's work number did not have an answering machine. The address file card lists the Inventor's work e-mail address, phone number and fax number, as well as his home phone number, home address and a post office box number (Ex. 9).

12. Petitioner's diligent efforts to find or reach the Inventor include calling his home phone number (Ex. 9) and leaving a message on the answering machine.

13. By letter dated July 23, 2003 (Ex. 10) to the Inventor's post office box number, the Petitioner asked the Inventor to review the CECOM Docket No. 5458 draft patent application documents.

14. By letter dated July 23, 2003 (Ex. 11) to the Inventor's home address, the Petitioner asked the Inventor to review the CECOM Docket No. 5458 draft patent application documents.

15. The U.S. Postal Service marked the envelope for the July 23, 2003 letter sent to the Inventor's post office box number (Ex. 10) with "Return To Sender" and "Attempted Not Known" (Ex. 12). The July 23, 2003 letter (Ex. 11) sent to the

Inventor's home address was returned to sender with an Insufficient Address stamp on the envelope (Ex. 13).

16. Petitioner's diligent efforts to find or reach the Inventor include an Internet search for his name (Ex. 14), which identified his name in various 1990's publications associated with Columbia University, where he performed graduate engineering studies, but did not provide his current whereabouts.

17. Petitioner's diligent efforts to find or reach the Inventor include an Internet search for the name of his company, Sonoro R&D Corporation (Ex. 15), which identified numerous uses of the Spanish word "sonoro," and the word "corporation," but did not provide his current whereabouts.

18. It is respectfully submitted that the Petitioner has expended diligent effort to contact the Inventor and that the Inventor cannot be found or reached after diligent effort.

19. During his Government employment, the Inventor submitted the CECOM Docket No. 5458 invention disclosure (Ex. 2), which he prepared during Government time as part of his duties, to the CECOM Legal Office's Intellectual Property Law Division for patent prosecution.

20. A Supporting Affidavit executed by the undersigned Petitioner is a statement of the facts supporting the accompanying Memorandum of Law and this Petition. The Supporting Affidavit demonstrates that the Inventor made the invention described in the CECOM Docket No. 5458 invention disclosure (Ex. 2) during the term of his Government employment (Ex. 1), that making the invention was within the scope of the Job Description attached to the DA Form 2871-R Invention Rights Questionnaire (Ex. 16), that the Government contributed facilities, equipment, materials and funds to making the invention, and that these efforts and expenditures bore a direct relation to, or were made in consequence of, the Inventor's official duties.

21. It is respectfully submitted that the Army has a proprietary interest in filing this patent application from an Inventor who cannot be found or reached because the Inventor made the invention described in the CECOM Docket No. 5458 invention disclosure (Ex. 2) during the term of his Government employment (Ex. 1) and the rules concerning the Government's rights to an invention made by a Government employee

found at 37 CFR Part 500, Uniform Patent Policy For Rights of Inventions Made by Government Employees (Ex. 17).

22. A Memorandum of Law is also submitted in accordance MPEP § 409.03(f) Proof of Proprietary Interest to demonstrate the Army's proprietary interest in this patent application. Based on 37 CFR Part 500, Uniform Patent Policy For Rights of Inventions Made by Government Employees (Ex. 17) and relevant legal precedent from the U.S. Court of Federal Claims, the accompanying Memorandum of Law concludes that the U.S. Court of Federal Claims, as the court of competent jurisdiction in cases involving patent rights of Government employees, would award title to the CECOM Docket No. 5458 invention to the United States Government, as the 37 CFR 1.47(b) applicant in this case.

23. This Petition is necessary to preserve the Army's proprietary interests in this patent application and prevent the irreparable damage caused by not obtaining patent protection.

24. As required by 37 CFR § 1.17(h), please charge the petition fee of \$130 to Deposit Account No. 119-2201. A Fee Transmittal for FY 2003 is enclosed.

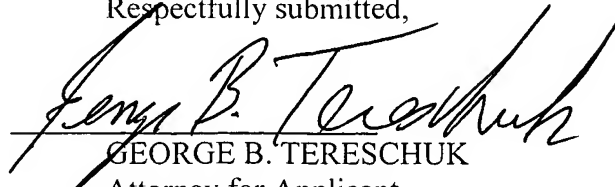
25. The Inventor's last known address is:

12 Willow Drive
Ocean, New Jersey, 07712

26. WHEREFORE, pursuant to 35 U.S.C. § 118 and 37 CFR § 1.47(b) it is respectfully requested that patent application designated as CECOM Docket No. 5458, entitled "Multi-Resonant Double-Sided High-Temperature Superconductive Magnetic Dipole Antenna," be filed for Dr. Shapur Sahba, the sole inventor, a former Government employee, who cannot be reached after diligent effort in order to protect the Army's proprietary interests therein.

21 October 2003
Date

Respectfully submitted,


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